

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222016.2 **DATE:** March 10, 1986
MATTER OF: Shelf Stable Foods, Inc.--Request for
Reconsideration

DIGEST:

Protest filed with GAO more than 10 working days after the contracting agency denied the firm's agency-level protest is untimely and will not be considered. Protester's continued pursuit of the matter with the contracting agency before filing with GAO does not alter this result.

Shelf Stable Foods, Inc., requests that we reconsider our dismissal of the firm's protest against the rejection of its proposal as late under Defense Logistics Agency (DLA) solicitation No. DLA13H-86-R-7966. We dismissed the protest as untimely, but Shelf Stable contends that it in fact met the timeliness requirements of our regulations.

We affirm the dismissal.

Offers under the solicitation were due by 3 p.m. on December 5, 1985. Shelf Stable's offer, submitted by telex, was not received until 3:16 p.m., and the firm was advised that the offer would not be considered. Shelf Stable protested that decision to DLA by a December 9 telex, on the basis that the late receipt was caused by a computer problem at Western Union. DLA denied the protest in a letter that Shelf Stable received on December 23. By letter of January 2, 1986, Shelf Stable asked DLA to reconsider and then protested to our Office upon being advised by DLA on February 3 that contracts were being awarded to other offerors in the procurement.

Section 21.2(a)(3) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985), requires that where a protest initially is filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the firm knows of initial adverse action at the contracting agency level. We dismissed the protest to our Office because it was not filed within 10 working days after Shelf Stable's December 23 receipt of DLA's letter denying the firm's protest.

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Shelf Stable, in requesting reconsideration, notes that it filed the protest here within 10 days after any contracts were awarded and argues that we should consider the merits of the issue because prior to the filing the firm still was pursuing the matter with the contracting officer and had not received a response to its January 2 letter to DLA asking the agency to reconsider its position.

Section 21.2(a)(3) of our Regulations is clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. The purpose of that rule, like the purpose of our other timeliness rules, is to insure that protests are filed at a point in the procurement when corrective action, if warranted, is most practicable. See Comdisco, Inc.--Reconsideration, B-214409.3, Dec. 3, 1984, 84-2 C.P.D. ¶ 596. The fact that a firm continues to pursue a denied protest with the contracting agency, as Shelf Stable did here, does not warrant our consideration of a subsequently filed protest that does not comply with section 21.2(a)(3). See Bobnreen Consultants, Inc., B-218214.3, May 31, 1985, 85-1 C.P.D. ¶ 636.

Since Shelf Stable's protest to our Office was not filed within the time limits prescribed by our Regulations, it properly was dismissed as untimely.

for Seymour Efron
Harry R. Van Cleve
General Counsel